DILPESH BALCHANDRA PANCHAL

v.

STATE OF GUJARAT

(Criminal Appeal No. 2215 of 2009)

APRIL 29, 2010

[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Penal Code, 1860 – ss. 302 and 114 – Murder – Caused alongwith the co- accused – Eye-witnesses to the incident – Recovery of weapon of offence – Conviction by Trial court of all the accused – High Court confirming conviction of two of the accused – Appeal by appellant-accused – Held: Prosecution spells out involvement of appellant-accused beyond doubt – Eye-witnesses were reliable – Non-availability of independent witnesses is not fatal to prosecution case – Medical evidence also supporting prosecution case – Conviction justified.

Appellant-accused alongwith two co-accused was prosecuted for killing one person. Prosecution case was that parents of the deceased were the eye-witnesses to the incident; that the accused persons, seeing the eye-witnesses ran away from the spot leaving behind the weapon of offence. The prosecution relied on the statement of witnesses, including eye-witnesses; medical evidence and evidence of recovery witnesses. Trial court convicted all the accused on the charge of murder and sentenced them to life imprisonment. High Court acquitted one of the accused and convicted the two, including appellant-accused. SLP by one of the convicted accused was dismissed in limine. The present appeal was filed by the appellant-accused.

The appellant-accused contended that the evidence of eye-witnesses was not reliable; that the case was not

A supported by independent witness; that medial evidence falsified the prosecution case; that leaving behind the weapon of offence is not a probable story; and that sentence of RI for life was not maintainable in law.

B Dismissing the appeal, the Court

HELD: 1.1. In the light of the prosecution evidence the involvement of the appellant who is the main accused has been spelt out beyond doubt. It is not correct to say that it would not have been possible for the eye-
C witnesses to see the incident. It is the conceded position that the families of the accused and that of the complainant were close neighbours though living on different floors. It is also the prosecution case that the attack was preceded by a scuffle and shouting and cries
D for help by the victim which immediately attracted the two witnesses out of their apartment and it was then that they saw the entire incident. It is also relevant that the incident happened between 8.30 – 9.00 p.m. at which time the presence of the witnesses at home would be natural.
E [Paras 7, 9, 12] [613-E; 610-G; 611-C-E]

1.2. The mere fact, that no independent witness has been examined, does not in any way cast a doubt on the evidence of the parents of the deceased who would be the last persons to leave out the actual assailants and
F involve some others instead. Independent witnesses are never forthcoming and the prosecution must, therefore, rely on close associates or relatives of the complainant party in order to support the prosecution story. [Para 9] [611-E-G]

G

1.3. The appellant was the person who had allegedly inflicted the knife blows on the deceased. In this view of the matter, there is absolutely no doubt that he was the primary assailant. It is also clear from the record
H including the statements u/s. 313 Cr.P.C that it was the

appellant who had been thrown out from employment by PW 1. Ipso facto the motive for the attack was to lie primarily on him. [Para 9] [611-G-H; 612-A-B]

1.4. It is not correct to say that the medical evidence falsified the prosecution story and that the number of injuries did not conform to the statements of the eye-witnesses. The plea that though only two injuries had been caused on the deceased as per the ocular evidence but eight had been found by the doctor, is misplaced. The doctor who conducted the post-mortem examination, had co-related the external injuries with the internal injuries, in the course of his evidence. It is significant that injury No.1 is only an abrasion and could easily be caused during a scuffle or a fall that preceded or followed the actual attack. In this view of the matter, there were only two effective injuries (i.e. 2 and 3) and this fits in with the prosecution story that only two injuries had been caused on the person of the deceased as the internal injuries were a result of the two knife blows. [Paras 10 and 11] [612-B-C; 613-B-C]

1.5. It is not correct to say that an assailant would not leave the murder weapon behind, while running away. The accused herein were not hardened criminals and therefore conscious that the recovery of the murder weapon would strengthen the prosecution story. It is also clear from the evidence that on account of the cries made by the deceased, his parents and two others had come out from the adjoining flats. It is, therefore, probable that appellant in his anxiety to escape had dropped the knife at the place of incident. [Para 12] [613-D-E]

2. Imprisonment for life has been awarded which is permissible u/s. 53 IPC and there is absolutely no reference or direction that the aforesaid term of imprisonment would be treated as rigorous or simple imprisonment. The plea that sentence of rigorous

A **imprisonment for life imposed by the trial court and confirmed by the High Court was not maintainable in law, therefore, is purely academic and calls for no comment. [Para 6] [610-E]**

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2215 of 2009.

From the Judgment & Order dated 19.6.2008 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 543 of 2001.

C

Parmanand Katara, Kusumlata Sharma, S. Ramamani for the Appellant.

Jesal, Nupur, Hemantika Wahi for the Respondent.

D The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. This appeal by way of special leave arises out of the following facts:

E 2. On 16th August 1999 at about 8.30 p.m. Ravubha the complainant and his wife Lilaba along with their son Indrasinh and his wife and children were at their residential Flat No.28, Madhuben Apartments, village Aduput, District Kutch. Indrasinh, however, left the house for purchasing a beedi from the adjoining shop. Ravubha, however, called out to him to return F to the house immediately and a few seconds later Ravubha and Lilaba heard Indrasinh seeking help. They rushed out of their apartment and saw that Indrasinh had been caught by the first accused Balchandra Parmanand Panchal and his son Hitesh Balchandra whereas the second son Dilpesh Balchandra, the G appellant herein, was inflicting knife blows on him. On seeing Ruvabha and Lilaba the three assailants ran away after throwing the knife and its scabbard on the floor. A neighbour Kishorebhai also reached the place immediately and helped the others in taking Indrasinh to the hospital. Other relatives of Indrasinh and

H

the police were also informed on the phone as to what had happened. A police party reached the place shortly thereafter and PSI Jala, who was on patrol duty was informed on the wireless. The PSI then returned to the Police Station and thereafter proceeded to the Rambagh hospital and recorded the statement of Ravubha whereupon a case under Section 302 and 114 of the IPC and under Section 135 of the Bombay Police Act was registered. PSI Jala also reached the place of incident, made the necessary enquiries and picked up the knife and scabbard from the place where the assailants had thrown them. The accused who were living in Flat No.26 in Madhuben Apartment were also arrested from their residence. On the completion of the investigation, the three accused were charged for the offences mentioned above.

3. The prosecution in support of his case relied on the statement of 14 witnesses, including the two eye witnesses, the parents of the deceased Ravubha and Lilaba, and in addition to the medical evidence and the evidence of the recovery witnesses. The accused in their statements under Section 313 of the Cr.P.C. denied their involvement in the incident and pleaded that they have been falsely roped in as their relations with the complainant party were strained as the appellant herein had earlier been employed by them in their factory but as he had allegedly misbehaved during his employment he had been unceremoniously thrown out from his job.

4. The trial court on a consideration of the evidence convicted all three accused on the charge of murder and sentenced each of them to imprisonment for life and to a fine of Rs.20,000/- and in default thereof to suffer rigorous imprisonment for six months. An appeal was thereafter taken to the High Court of Gujarat, which by the impugned judgment, held that the evidence against Balchandra Parmanand and Dilpesh, the present appellant, was conclusive as to their guilt but insofar Hitesh Balchandra was concerned there was some doubt about his participation in the incident and the possibility

A that he had been roped in along with the other family members could not be ruled out. The appeal was accordingly allowed in part. The conviction and sentence of Balchandra Parmanand and Dipesh Balchandra was thus maintained by the High Court but the appeal of Hitesh Balchandra was allowed and he was
B ordered to be acquitted.

5. At the very outset, it has been brought to our notice by the learned counsel for the parties that SLP No.9381 of 2008 filed by Balchandra Parmanand, one of the accused whose
C conviction had been maintained by the High Court, has been dismissed in limine on 19th December 2008.

6. Pt. Parmanad Katara, the learned senior counsel for the appellant has raised several pleas during the course of hearing. He has first pointed out that the sentence of rigorous
D imprisonment for life imposed by the trial court and confirmed by the High Court was not justified nor maintainable in law. We find the plea of the learned counsel to be without any basis. From a bare perusal of the two judgments it is clear that imprisonment for life has been awarded which is permissible
E under Section 53 of the IPC and there is absolutely no reference or direction that the aforesaid term of imprisonment would be treated as rigorous or simple imprisonment. The argument, therefore, is purely academic and calls for no comment.

F 7. Faced with this situation, the learned counsel has fallen back on the merits of the case. He has submitted that the prosecution story rested on the statement of only two witnesses PW1 and PW2, the mother and father of the deceased, and in the light of the fact that the incident had happened on the 3rd floor whereas the witnesses were residing on the 4th floor, it
G would not have been possible for them to have seen the incident. It has also been submitted that as per the ocular evidence only two injuries had been caused on the person of the deceased but the Doctor had found six injuries during the post-mortem examination which clearly falsified both the
H presence of the witnesses as well as the prosecution story. It

has been further highlighted that the witnesses had chosen to implicate the appellant in a false case on account of the enmity as the appellant who had been earlier employed by the complainant party had been thrown out from service on account of misbehaviour. It has finally been pleaded that the recovery of the knife from the place of incident appeared to be unnatural as an assailant would ordinarily not leave the weapon behind while running away.

8. The learned state counsel has, however, supported the judgment of the courts below.

9. We have considered the arguments advanced by the learned counsel for the parties. It is the conceded position that the families of the accused and that of the complainant were close neighbours though living on different floors in small sized flats. It is also the prosecution case that the attack was preceded by a scuffle and shouting and cries for help by the victim which immediately attracted the two witnesses out of their apartment and it was then that they saw the entire incident. It is also relevant that the incident happened between 8.30 – 9.00 p.m. at which time the presence of the witnesses at home would be natural. It is true, as has been contended, that there were 28 flats in the locality and no independent witness has been examined by the prosecution. It is, however, now accepted without any hesitation, that independent witnesses are never forthcoming and the prosecution must, therefore, rely on close associates or relatives of the complainant party in order to support the prosecution story. The mere fact, therefore that no independent witness has been examined, does not in any way cast a doubt on the evidence of the parents of the deceased who would be the last persons to leave out the actual assailants and involve some others instead. It must also be borne in mind that the appellant herein was the person who had allegedly inflicted the knife blows on the deceased. In this view of the matter, there is absolutely no doubt that he was the primary assailant. It is also clear from the record including the

A statements under Section 313 of the accused that it was the appellant herein who had been thrown out from employment by PW 1. Ipso facto the motive for the attack was to lie primarily on him.

B 10. The plea that the medical evidence falsified the prosecution story and that the number of injuries did not conform to the statements of the eye witnesses, must also be rejected. The submission of the counsel for the appellants that though only two injuries had been caused on the deceased as per the ocular evidence but eight had been found by the doctor, C is misplaced. The injuries found on the deceased during post-mortem are reproduced below:

External injuries:

D 1. From the outer corner of left eyebrow a 9 cm. above a conduce abrasion 2x2 cm size.

2. On chest right nipple 5 cm. outward and 12 cm. below horizontal 3x 1.5 cm. deep thrust stab wound.

E 3. On right of stomach from right iliac bone 4.5 cm. above mid auxiliary line horizontal thrust wound of 3x1.5 cm. deep.

Internal injuries:

F 4. In right chest in 9th inter-costal space thrust wound going downward.

5. A thrust wound going upward in the stomach wall.

G 6. In right lobe of liver 3 x 1.2 cm. horizontal thrust wound which was near falsi farum liquiment in the liver which pass across liver in inferior veena Cava 5 cm. liner cut.

7. A cut in right kidney artery and vein.

H

8. In stomach vacuum was 3.25 litre of blood mix fluid. A

11. Dr. Hiren Kantilal Mehta, who conducted the post-mortem examination, had also co-related the external with the internal injuries in the course of his evidence. It is significant that injury No.1 is only an abrasion and could easily be caused during a scuffle or a fall that preceded or followed the actual attack. In this view of the matter, there were only two effective injuries (i.e. 2 and 3) and this fits in with the prosecution story that only two injuries had been caused on the person of the deceased as the internal injuries were a result of the two knife blows. B C

12. The submission that an assailant would not leave the murder weapon behind while running away must again be rejected. The accused herein were not hardened criminals and therefore conscious that the recovery of the murder weapon would strengthen the prosecution story. It is also clear from the evidence that on account of the cries made by the deceased, his parents and two others had come out from the adjoining flats. It is, therefore, probable that appellant in his anxiety to escape had dropped the knife at the place of incident. In the light of the prosecution evidence the involvement of the appellant who is the main accused has been spelt out beyond doubt. It bears repetition that the SLP filed by Balchandra, the father of the appellant, had earlier been dismissed in limine vide order dated 19th December 2008. We, therefore, find no merit in the appeal. It is accordingly dismissed. D E F

K.K.T. Appeal dismissed.